



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AUG 11 2017

Tyler Erdman

Weston, CT 06883

RE: MURs 7005 and 7056

Dear Mr. Erdman:

This is in reference to two complaints you filed with the Federal Election Commission on February 1, 2016, and April 28, 2016, respectively, numbered MURs 7005 and 7056, and the supplement to MUR 7056 filed on June 21, 2016, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On October 25, 2016, the Commission found reason to believe that Adam H. Victor and TransGas Development Systems, LLC violated 52 U.S.C. §§ 30116(a) or 30118(a), and 30122 in connection with alleged contributions in the name of another. Additionally, on that date, the Commission found: no reason to believe that Adam H. Victor and Transnational Management Systems II, LLC violated 52 U.S.C. §§ 30116(a) or 30118(a) in connection with the leasing of an airplane to Friends of Herman Cain; no reason to believe Pegasus Elite Aviation, Inc. violated 52 U.S.C. § 30118(a); no reason to believe that Herman Cain or Friends of Herman Cain and Mark J. Block in his official capacity violated 52 U.S.C. §§ 30116(f) or 30118(a); and no reason to believe that Transnational Management Systems LLC violated the Act.

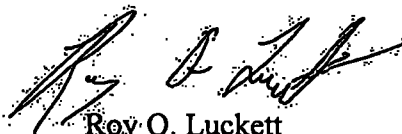
On August 3, 2017, the Commission accepted the signed conciliation agreement with Adam Victor and TransGas Development Systems, LLC. On that same date, the Commission dismissed allegations with respect to MURs 7005 and 7056 that Marti Dani (formerly Marta Grabowska), Nana Yoshioka, Randall Harris, Adam Victor, Jr., Alexia Victor, Alicia Victor, Jo-Ayla Victor, and Jo-Ann Bruggemann violated 52 U.S.C. § 30122. On that date the Commission also found no reason to believe that Garry Coulter violated 52 U.S.C. § 30122 with respect to both MURs. With respect to MUR 7005, on that date the Commission also dismissed the allegations that the Adam Victor Grantor Trust, Noel Daley, Michael C.J. Vanderkemp, and Project Orange Associates LLC violated 52 U.S.C. § 30122, and no reason to believe that TransGas Energy Systems LLC, Gas Alternative Systems, Inc., or Adam Victor & Son Stables LLC violated 52 U.S.C. § 30122. Finally, on August 3, 2017, the Commission found no reason to believe that Roberto Larrinaga or USA Risk Intermediaries LLC violated 52 U.S.C. § 30122 with respect to MUR 7056. Accordingly, the Commission has closed its file in each matter.

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Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the agreement with Victor and TransGas Development Systems, LLC is enclosed for your information. In addition, copies of the Factual and Legal Analyses concerning Adam H. Victor, TransGas Development Systems LLC, Transnational Management Services LLC, Transnational Management Services II, LLC, Herman Cain, Friends of Herman Cain and Mark J. Block in his official capacity as treasurer, and Pegasus Elite Aviation, Inc. are enclosed.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Roy Q. Luckett
Staff Attorney

Enclosures
Conciliation agreement
Factual and Legal Analyses

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FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

As explained more fully below, the record evidence supports a reasonable inference that Victor and one of his companies, TransGas Development Systems, LLC, made contributions in others' names. The record shows that several contributors received money from Victor and this company close in time to, and in the same amounts as, the contributions they made. Further, five of the contribution checks, which Victor's family members purportedly used to make

¹ Manchin for West Virginia is the principal campaign committee for Joe Manchin III, a candidate for the United States Senate from West Virginia in 2012. Friends of Herman Cain is the principal campaign committee for Herman Cain, a candidate for President in 2012.

1 contributions, were drawn on a bank account that Victor controlled, the checks did not have the
2 family members' names on them, and they were consecutively numbered. Finally, there is
3 information in the Commission's possession that Victor asked Complainant and individuals
4 working at a business involved in the airplane lease to make contributions that he would
5 reimburse.

6 Therefore, the Commission finds reason to believe that Adam H. Victor and TransGas
7 Development Systems, LLC, made contributions in the names of others. Regarding the airplane
8 lease, the Commission finds no reason to believe that Adam H. Victor or Transnational
9 Management Services II, LLC made an excessive or prohibited contribution because there is
10 sworn, expert information before the Commission that the Cain Committee paid at least fair
11 market rates for use of the plane.

12 II. FACTUAL AND LEGAL ANALYSIS

13 A. Contributions in the Name of Another

14 1. Facts

15 Victor owns and controls a variety of businesses, including TransGas Development
16 Systems, LLC ("TGDS"), Project Orange Associates, LLC ("POA"), and Adam Victor Grantor
17 Trust. Since 2002, Victor has made at least 41 contributions totaling more than \$212,000 to
18 Federal candidates and committees, including Manchin for West Virginia ("Manchin
19 Committee") and Friends of Herman Cain ("Cain Committee").²

² Victor contributed the maximum allowable amount to the Manchin Committee for the 2012 Primary and General Elections when he made two \$2,500 contributions on March 29, 2011, and made the maximum allowable contribution to the Cain Committee for the 2012 Primary Election when he contributed \$2,500 on January 17, 2012.

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1 Victor solicited contributions for Cain,³ and he served on the host committee for a
2 November 11, 2011, fundraiser for the Cain Committee.⁴

3 The Complainant, a former employee of Victor,⁵ alleges that Victor or his businesses
4 made contributions to the Cain Committees through “straw donors,” who are Victor employees,
5 business associates, and family members. The potential violations arising from 10 such
6 allegedly reimbursed contributions between November 2011 and January 2012 have not expired
7 under the applicable five-year statute of limitations:⁶ a \$2,500 contribution to Cain dated two
8 days before the event; seven others totaling \$15,500 dated January 17, 2012, which may be
9 related to that event; and two \$2,500 contributions to the Manchin Committee on December 30,
10 2011.⁷

³ See Victor Resp., Victor Decl. ¶ 6.

⁴ See MUR 7056 Compl. at 9 (¶ 51) (Apr. 28, 2016). A copy of the event program identifying Victor as a member of the Host Committee for the event is attached to the Supplement to the MUR 7056 Complaint (“Supplement”) (Photocopy of Invitation to Cain Fundraising Event) (June 21, 2016).

⁵ Complainant Tyler Erdman and Victor appear to have an acrimonious relationship and are involved in unrelated litigation.

⁶ 28 U.S.C. § 2462.

⁷ Of the eight contribution checks made payable to the Cain Committee, only one, which was dated November 9, 2011, was received about the same time as the November 11, 2011, fundraiser. The Complaint and the Cain Committee’s disclosure reports show the other contributions were received on January 17, 2012. Cain Committee 2012 April Quarterly Report (Apr. 13, 2012) at 12, 14, 16, and 17, available at <http://docquery.fec.gov/pdf/063/12970923063/12970923063.pdf>.

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2. Analysis

a. Payments to Victor Employees and Business Associates Match the Contribution Amounts

The allegation that Victor paid employees and business associates amounts that matched the amounts of their contributions is supported by copies of checks, provided in the Victor Response, made payable to two of the alleged straw donors.⁸

Randall Harris, a business associate of Victor, contributed \$2,500 to the Manchin Committee on December 30, 2011, one day after a \$2,500 check payable to Harris was drawn on an account of one of Victor's businesses, TGDS.⁹ Harris denies he was an employee of Victor, and explains that at the time of the contributions at issue, the Mingo County Redevelopment Authority retained him to advance one of TGDS's projects, building a coal-to-gas plant in West Virginia.¹⁰ Harris acknowledged receiving \$2,500 from TGDS through a check dated December 29, 2011, but stated that it was a reimbursement for travel expenses.¹¹

Nana Yoshioka, who at the time was Victor's personal assistant and a technical coordinator at (POA), a Victor business,¹² contributed \$2,500 to the Cain Committee on January

⁸ The Complaint also alleged contributions in the name of another involving some of the same alleged straw donors totaling \$40,000 to the Manchin Committee on or about March 29, 2011, activity that is now beyond the statute of limitations. See MUR 7005 Compl. at 5, 7, 14, 16, 17, 19, and 20 (¶¶ 17, 25, 67, 76, 85, 94, and 103). Each of the nine contributors who made a contribution to Manchin at the time of the March 29, 2011, fundraiser also contributed \$2,400 to Manchin on September 29, 2010, the maximum allowable limit at that time. Manchin Committee 2010 October Quarterly Report (Oct. 15, 2010), *available at* <http://docquery.fec.gov/pdf/290/10020881290/10020881290.pdf>. These contributions were not noted in either Complaint and are also beyond the statute of limitations.

⁹ The TGDS check, identified in the Complaint as check number 1252 but identified in the Victor Response as number 1256, lists "Reimbursement" on the "For" line. See MUR 7005 Compl. at 9 (¶¶ 35-36); Victor Resp., Harris Decl. (photocopies of checks accompanying Declaration).

¹⁰ Harris Resp. (Feb. 18, 2016)

¹¹ Victor Resp. at 10, Harris Decl. ¶ 2.

¹² Victor Resp., Yoshioka Decl. ¶ 3.

1 17, 2012. The record includes evidence that TGDS issued a \$2,500 check to her on November 9,
2 2011, two days before the November 11, 2011, Cain Committee fundraiser in New York.¹³
3 Yoshioka states that the funds she received were a reimbursement for an IRA contribution.¹⁴

4 Marta Dani (formerly known as Marta Grabowska), POA's comptroller at the time of her
5 contribution, made a \$2,500 contribution to the Cain Committee on November 9, 2011.¹⁵ She
6 allegedly received payments from Victor or one of his companies matching the amount of this
7 contribution and \$5,000 she contributed to the Manchin Committee that is now beyond the
8 statute of limitations.¹⁶ She stated that the funds she received were a reimbursement for interior
9 design purchases and a contribution to her IRA.¹⁷ Victor's Response includes a 2011 federal tax
10 form for Dani dated May 22, 2012, showing an undated \$2,500 contribution to her IRA.¹⁸

11 Garry Coulter, an executive at the company responsible for providing insurance to
12 Victor's businesses,¹⁹ made a \$2,500 contribution to the Manchin Committee on December 30,
13 2011, and a \$500 contribution to the Cain Committee on January 17, 2012. The MUR 7005
14 Complaint alleges that Victor or his businesses control bank accounts at Signature Bank, and

¹³ See Victor Resp., Yoshioka Decl. (photocopies of checks accompanying Declaration). Yoshioka previously made two \$2,500 contributions to the Manchin Committee on March 29, 2011, seven days after Victor issued a \$5,000 check from his personal account to Yoshioka.

¹⁴ Victor Resp., Yoshioka Decl. ¶ 3.

¹⁵ Victor Resp., Dani Decl. ¶ 2.

¹⁶ The Victor Response did not provide copies of any checks made payable to Dani.

¹⁷ Victor Resp., Dani Decl. ¶ 3.

¹⁸ *Id.*

¹⁹ At the time that he attended the November 2011 Cain Committee fundraiser and made the December 30, 2011, contribution to the Manchin Committee, Coulter worked at USA Risk Intermediaries, LLC, as an Executive Vice President. See USA Risk Intermediaries, LLC, Resp. (May 26, 2016).

1 checks from those accounts were issued to Coulter on or about the dates of the contributions.²⁰
2 There are no checks or other documents currently in the record corroborating the Complaint's
3 allegations. Coulter denies acting as "straw man" and initially replied that the funds paid to him
4 were for consulting services.²¹ In a subsequent sworn declaration, Coulter states that the
5 unidentified payments were not paid to him.²²

6 b. Victor Family Contribution Checks from One Account

7 The January 17, 2012, contributions from Victor's wife (Jo-Ann Bruggemann) and his
8 four children (Adam, Alexia, Alia, and Jo-Ayla Victor)²³ appear to have been made from one
9 checking account that Victor apparently owned or controlled. According to the MUR 7056
10 Supplement, around the time of the November 11, 2011, Cain fundraiser, Victor presented five
11 \$2,500 checks to the Cain Committee that did not show the names of the contributors.²⁴ A Cain
12 Committee representative emailed Garry Coulter and asked him to help identify the five
13 contributors.²⁵ The Cain Committee later sent Coulter a spreadsheet that lists Victor, his wife,
14 and his children as contributors. According to this spreadsheet, the contributions by Victor's
15 family were made with sequentially numbered checks.²⁶ The Cain Committee ultimately
16 disclosed the contributor information set forth on the spreadsheet.

²⁰ MUR 7005 Compl. at 10 (¶ 46). Coulter did not provide copies of any checks allegedly made out to him.

²¹ Coulter Resp. (Feb. 18, 2016) (response filed solely by Coulter prior to the Victor Response).

²² Victor Resp., Garry Coulter Decl. ¶ 3.

²³ It appears that all four of Victor's children were at least 19 years old at the time of the contributions.

²⁴ Supplement at 4 (¶¶ 10, 13) (June 21, 2016).

²⁵ The Supplement to the MUR 7056 Complaint contains copies of these emails. *Id.* at 5-7 (¶ 15-22).

²⁶ *Id.* at 7 (¶ 22), Ex. E.

1 In his original Complaint in MUR 7056, the Complainant alleged that Victor arranged for
2 the contributions by his children in one of three possible ways.²⁷ The Supplement to that
3 Complaint, however, specifically alleges that Victor instructed Larrinaga to withdraw \$12,500
4 from one of Victor's Signature Bank accounts in Victor's name, or in the name of one of the
5 businesses that he controlled, to cover the five checks that were generated to make contributions
6 to the Cain Committee.²⁸

7 Each of the family members submitted sworn declarations averring that, "The
8 unidentified payments were not paid to" them.²⁹ The Victor Respondents challenge the validity
9 of the Complaints and Supplement.³⁰

10 c. Allegations that Victor Attempted to Make Other Contributions in
11 the Names of Others
12

13 Complainant alleges that Victor asked him and individuals working at a company with
14 which Victor did business to participate in the alleged reimbursement scheme. Complainant
15 alleges that Victor solicited him to be a "straw donor" shortly before the November 2011 Cain

²⁷ Compl. at 16 (¶ 16), MUR 7056.

²⁸ *Id.* at 8 (¶ 26). The Complainant maintains that he overheard Victor talking on the phone to Larrinaga in early November 2011 about generating checks for the Cain Committee fundraiser. *Id.* at 8 (¶ 27).

²⁹ See Victor Resp., Declaration of Jo-Ann Bruggemann.

³⁰ Victor Resp. to Supplement (July 25, 2016). Respondents assert that the MUR 7005 and MUR 7056 Complaints should be dismissed because the source of the information contained in the Complaints was not based on the Complainant's personal knowledge, and he has not identified the source of his information. *Id.* at 2. Respondents rely upon 11 C.F.R. § 111.4(d)(2), which requires that a complaint identify the complainant, be sworn and signed, and that the allegations in a complaint "not based upon personal knowledge" should identify the source of the information that "gives rise to the complainant's belief in the truth of such statements." Thus, the Commission's regulations do not require that complaints be based solely on personal knowledge or prohibit complaints based in information provided by third parties. On July 27, 2016, Victor filed another response that also did not address the allegation that the checks for the Victor family contributions were sequentially numbered. Victor Resp. to Supplement (July 27, 2016). Respondents continued to argue that the Complaint should be dismissed and refer to the Complainant's recent deposition testimony in a civil suit concerning his alleged lack of personal knowledge of the banking information cited in both Complaints.

1 fundraiser, but Complainant refused.³¹ The Commission has information that Victor also asked
2 individuals working at the company to contribute to various political candidates and promised
3 that he would reimburse them. This information tends to corroborate the allegations of
4 completed contributions in the names of others.

5 d. The Available Information Supports Finding Reason to Believe
6 that Victor and One of his Companies Made Contributions in the
7 Names of Others
8

9 The Act provides that a contribution includes "any gift, subscription, loan, advance, or
10 deposit of money or anything of value made by any person for the purpose of influencing any
11 election for Federal office."³² The term "person" for purposes of the Act and Commission
12 regulations includes partnerships, corporations, and "any other organization or group of
13 persons."³³ The Act prohibits corporations from making contributions to any federal candidate
14 or political committee and prohibits corporate officers and directors from consenting to such
15 contributions.³⁴ An LLC that elects to be treated as a corporation by the Internal Revenue
16 Service or an LLC with publicly traded shares shall be considered a corporation for contribution
17 purposes.³⁵ A contribution from an LLC that elects to be treated as a partnership shall be
18 attributed to its members in direct proportion to their shares of the profits, or by agreement of the
19 partners, subject to restrictions,³⁶ or, in the case of a single-member LLC, to its sole member.³⁷

³¹ Supplement at 8 (¶ 28); MUR 7056 Compl. at 14 (¶ 70). Neither the Manchin Committee nor the Cain Committee disclosed any contribution from Complainant.

³² 52 U.S.C. § 30101(8)(A).

³³ *Id.* § 30101(11); 11 C.F.R. § 100.10.

³⁴ 52 U.S.C. § 30118(a).

³⁵ 11 C.F.R. § 110.1(g)(3), (e)(1)-(2).

³⁶ *Id.* § 110.1(g)(2), (e)(1)-(2).

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1 In the 2012 election cycle, the Act prohibited a person from making contributions to a candidate
2 which, in the aggregate, exceeded \$2,500 per election.³⁸ The Act further provides that no person
3 shall make a contribution in the name of another or knowingly permit his name or her to be used
4 to effect such a contribution.³⁹

5 The available information supports a reasonable inference that Victor and TGDS made
6 contributions in the names of others. Several of the alleged conduits acknowledge that they
7 received payments from Victor or his companies close in time to, and in the exact amounts of
8 their respective contributions. In addition, the sequentially numbered checks Victor's family
9 members purportedly used to make contributions all came from an account Victor apparently
10 controlled, and those checks did not have the contributors' names on them.

11 The alleged conduits offer a variety of explanations for the contemporaneous transfers of
12 funds they received in the same amounts as the contributions they made. Despite these
13 explanations, we find that there is a reasonable inference that the funds they received were to
14 reimburse their contributions.

15 Other than the contributions at issue here, almost all of the alleged conduits have scant
16 contribution histories. Indeed, most of the alleged conduits have made no other contributions
17 besides their contributions to the Manchin and Cain Committees.⁴⁰

³⁷ *Id.* § 110.1(g)(4).

³⁸ *Id.* See 11 C.F.R. § 110.1(b)(1).

³⁹ 52 U.S.C. § 30122. See also 11 C.F.R. § 110.4(b); *United States v. O'Donnell*, 608 F.3d 546, 549, 553 (9th Cir. 2010).

⁴⁰ Before his contributions in 2011 and 2012, Gary Coulter made eight contributions totaling \$4,750, according to the FEC contributor database. Alexia Victor, Jo-Ann Bruggemann, and Randall Harris are the only other alleged conduits who have made a contribution to an entity other than the Manchin and Cain Committees. Victor (as an 18-year-old student) and Bruggemann contributed \$6,000 and \$10,000, respectively, to the WV State Democratic Executive Committee on October 25, 2010, the same date that Victor made a \$10,000 contribution to

As for Victor, only one paragraph of his 21-paragraph Declaration addresses the conduit contribution allegation. Victor explains:

[t]o the best of [his] knowledge, the payments and/or checks alleged in the complaints as being reimbursements for the identified contributions were, with respect to Marta Dani, Nana Yoshioka and Gary [sic] Coulter, as stated in their declarations - strictly for business, employee IRA contributions or personal purposes, or with respect to the remaining individual respondents, as stated in their declarations - were not made at all.⁴¹

Victor does not specifically deny that he reimbursed the contributions; he merely relies on the declarations of the alleged conduits. However, these conduits did not swear that they made contributions with their own funds, nor did they expressly deny that Victor or one of his businesses made contributions in their names. Instead, Harris, Yoshioka, and Dani swear that the payments were for other purposes, such as travel reimbursements, dental expenses, IRA contributions, and home furnishings.⁴² However, it is improbable that all of these activities had the same value, \$2,500, and they all happened at about the same time. Victor's Declaration also does not specifically mention another alleged conduit, Randall Harris, among the individuals whose reimbursements were "strictly for business."⁴³

Further, Garry Coulter and all of Victor's family members signed sworn Declarations that contain the same sentence: "*unidentified payments and/or checks referenced in [the MUR 7005*

the same committee. WV State Democratic Executive Committee 2010 Post-General Report at 11,12 (Dec. 2, 2010), available at <http://docquery.fec.gov/pdf/133/10992359133/10992359133.pdf>. And only Harris has made another federal contribution since the alleged reimbursements: On June 26, 2014, he made a \$250 contribution to the Nick Rahall campaign. See Keep Nick Rahall in Congress Committee 2014 July Quarterly Report at 67 (July 15, 2014), available at <http://docquery.fec.gov/pdf/686/14961621686/14961621686.pdf>.

⁴¹ Victor Resp., Adam H. Victor Decl. ¶ 7.

⁴² Victor Resp., Harris Decl. ¶ 2, Yoshioka Decl. ¶ 3, Dani Decl. ¶ 3.

⁴³ *Id.* In contrast, the unsworn portion of the Victor Response describes Harris's reimbursement as "strictly for business" but omits such a description of Coulter's contribution from the group. Victor Resp. at 4.

1 *Complaint*] were not paid to [Respondent].”⁴⁴ But these brief declarations supply no other facts,
2 except to verify that each declarant is a Respondent and to explain how they are related to Victor.
3 They do not explain why the Cain Committee needed help determining who made which
4 contribution or why the contribution checks associated with the Victor family members were
5 consecutively numbered. In fact, these Respondents do not even acknowledge they made
6 contributions. Indeed, the brief Declarations are not inconsistent with Victor simply paying for
7 their contributions.

8 In summary, the available information, including the match between the amounts Victor
9 or his companies paid the contributors and the amount of their contributions, the timing of these
10 payments, the improbability that these events are coincidental, the sequential numbering of the
11 family contribution checks, the lack of information in the Respondents’ denials, and the paucity
12 of other contributions by the alleged conduits all support the conclusion that Victor or his
13 companies made contributions in the names of others.⁴⁵

14 Accordingly, the Commission finds reason to believe that Adam H. Victor and TGDS
15 violated 52 U.S.C. §§ 30116(a) or 30118(a),⁴⁶ and 30122 by making excessive or prohibited
16 contributions in the names of others to the Manchin and Cain Committees.

⁴⁴ Victor Resp., Coulter Decl. ¶ 3; see Declarations of Jo-Ann Bruggemann, Alexia Victor, Alia Victor, Jo-Ayla Victor, and Adam Victor, Jr. Coulter’s Declaration attached to the joint Victor Response is not nearly as specific as his earlier unsworn response to the MUR 7005 Complaint, which he filed individually. In the earlier response, Coulter explicitly denies participating in a straw donor scheme and claims all of the payments he received were for management consulting services. Coulter Resp. at 1-2.

⁴⁵ See, e.g., MUR 6234 (Arlen B. Ceñac, Jr., *et al.*) (Commission found reason to believe respondent knowingly and willfully violated the AEC by directing the assistant manager of a bank to prepare six cashiers’ checks made payable to a political committee and listed the names and addresses of the “remitters” along with the specific amounts to appear on each check).

⁴⁶ We note that certain facts — such as the tax status of TGDS — are unclear. We intend to discover that information during the proposed investigation.

1 The Act also addresses violations of law that are knowing and willful.⁴⁷ The knowing
2 and willful standard requires knowledge that one is violating the law.⁴⁸ A violation of the Act is
3 considered knowing and willful if the “acts were committed with full knowledge of all the
4 relevant facts and a recognition that the action is prohibited by law.”⁴⁹ Evidence does not have
5 to show that the respondent had a knowledge of the specific statute or regulation allegedly
6 violated, just that the respondent acted voluntarily and was aware that his conduct was unlawful;
7 an inference of knowing and willful conduct may be drawn from the defendant’s scheme to
8 disguise the source of funds used in illegal activities.⁵⁰ As there is information in the current
9 record that could be viewed as suggesting that Victor and/or his businesses engaged in knowing
10 and willful activity by making contributions in the name of another, an investigation is needed to
11 resolve this issue.

12 **B. Alleged Excessive Contribution in the form of a Below-Market Airplane**
13 **Lease (MUR 7056)**
14

15 The Complaint alleges that Transnational Management Systems LLC (“TNMS”) and
16 Transnational Management Systems II, LLC (“TNMS II”), two LLCs of Adam H. Victor, leased
17 an airplane to the Cain Committee at a reduced price.⁵¹ According to the Complaint, Victor
18 owns Gulfstream jets through the two LLCs, and an outside firm, Pegasus Elite Aviation, Inc.

⁴⁷ See 52 U.S.C. §§ 30109(a)(5)(B) and 30109(d).

⁴⁸ *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986).

⁴⁹ 122 Cong. Rec. 12, 197, 12,199 (May 3, 1976).

⁵⁰ *United States v. Danielczyk*, 917 F. Supp. 2d 573 (E.D. Va 2013).

⁵¹ MUR 7056 Compl. at 17 (¶ 80).

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1 (“Pegasus”), manages the jets.⁵² The Complaint alleges that, pursuant to an agreement between
2 the LLCs and Pegasus, the usual charter rate for use of the planes was \$5,000 per hour plus fuel
3 and airport fees, but the Cain Committee was charged only \$25,000 for five days, plus fuel and
4 airport fees, allegedly a 75% discount from the usual and normal charter cost.⁵³ In other words,
5 the Complainant alleges that the LLCs and Victor made in-kind contributions to the Cain
6 Committee worth \$75,000.⁵⁴

7 The available information suggests that the Cain Committee paid at least fair market
8 value to lease the plane owned by TNMS II. According to the available information, a customer
9 would ordinarily pay an hourly rate, and the typical charter rate at that time would have been
10 \$5,000 per flight hour plus a \$750 fuel surcharge. Under this calculation, the charge to Cain
11 would have been \$171,925. However, there is information before the Commission that the Cain
12 Committee paid separately for landings and fuel; these items are usually rolled into the hourly
13 charge. Cain paid a daily rate of \$5,000 for ten days, or \$50,000, plus \$112,350.15 in fuel costs,
14 and \$60,000 in landing fees for a total amount of \$222,350.15. Thus, according to the available
15 information, Cain actually paid at least the normal and usual charge. A sworn declaration from a
16 certified senior aircraft appraiser supports this argument.

17 The available information, which includes a sworn declaration from an apparently expert
18 appraiser, appears to sufficiently refute Complainant’s allegation, and there is no contrary
19 information. Accordingly, the Commission finds no reason to believe that Adam H. Victor
20 or Transnational Management Systems II, LLC violated 52 U.S.C. §§ 30116(a) or 30118(a).

⁵² *Id.* at 6-7 (¶¶ 31-34).

⁵³ *Id.* at 8, 12 (¶¶ 40-42, 58-60).

⁵⁴ *Id.* at 12-14 (¶¶ 61-63, 66-68).

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1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Friends of Herman Cain and Mark J. Block **MUR 7056**
6 in his official capacity as treasurer
7 Herman Cain
8

9 **I. INTRODUCTION**

10 Complainant alleges that Adam H. Victor and other businesses made an in-kind
11 contribution to Friends of Herman Cain and Mark J. Block in his official capacity as treasurer
12 ("Cain Committee") and Herman Cain by leasing them a jet at a below-market price. Herman
13 Cain and the Cain Committee deny this allegation. As discussed in further detail below, based
14 on the available information, the Commission finds no reason to believe that the Cain Committee
15 or Herman Cain violated 52 U.S.C. §§ 30116(f) or 30118(a) by accepting the alleged excessive
16 or prohibited in-kind contribution.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits
19 corporations from making contributions to any federal candidate or candidate committee, and
20 prohibits candidates and candidate committees from knowingly receiving such contributions.
21 52 U.S.C. § 30118(a). An LLC that elects to be treated as a corporation by the Internal Revenue
22 Service or an LLC with publicly traded shares shall be considered a corporation for contribution
23 purposes. 11 C.F.R. § 110.1(g)(3). A contribution from an LLC that elects to be treated as a
24 partnership shall be attributed to its members in direct proportion to their shares of the profits, or
25 by agreement of the partners, subject to restrictions or, in the case of a single-member LLC, to its
26 sole member. 11 C.F.R. § 110.1(g)(2), (4). In the 2012 election cycle, the Act limited a person
27 from making contributions to a candidate and candidate committee which, in the aggregate,

1 exceeded \$2,500 per election, and the Act prohibits these recipients from knowingly accepting
2 contributions in excess of the limits. 52 U.S.C. §§ 30116(a)(1)(A), 30116(f); 11 C.F.R.
3 § 110.1(b)(1).

4 The Complaint alleges that Adam H. Victor and two of his LLCs, Transnational
5 Management Systems LLC ("TNMS") and Transnational Management Systems II, LLC
6 ("TNMS II"), leased an airplane to the Cain Committee at a reduced price.¹ According to the
7 Complaint, Victor owns Gulfstream jets through the two LLCs, and an outside firm, Pegasus
8 Elite Aviation, Inc. ("Pegasus"), manages the jets.² The Complaint alleges that, pursuant to an
9 agreement between the LLCs and Pegasus, the usual charter rate for use of the planes was \$5,000
10 per hour plus fuel and airport fees, but the Cain Committee was charged only \$25,000 for five
11 days, plus fuel and airport fees, allegedly a 75% discount from the usual and normal charter
12 cost.³ In other words, the Complainant alleges that Victor and the LLCs made in-kind
13 contributions to the Cain Committee worth \$75,000, and the Cain Committee did not disclose
14 them.⁴

15 The available information suggests that the Cain Committee paid at least fair market
16 value to lease the plane owned by TNMS II. According to the available information, a customer
17 would ordinarily pay an hourly rate, and the typical charter rate at that time would have been
18 \$5,000 per flight hour plus a \$750 fuel surcharge. Under this calculation, the charge to Cain
19 would have been \$171,925. The Cain Committee, however, paid separately for landings and

¹ MUR 7056 Compl. at 17 (¶ 80).

² *Id.* at 6-7 (¶¶ 31-34).

³ *Id.* at 8, 12 (¶¶ 40-42, 58-60).

⁴ *Id.* at 12-14 (¶¶ 61-63, 66-68).

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1 fuel; these items are usually rolled into the hourly charge. Cain paid a daily rate of \$5,000 for
2 ten days, or \$50,000, plus \$112,350.15 in fuel costs, and \$60,000 in landing fees for a total
3 amount of \$222,350.15.⁵ Thus, according to the available information, Cain paid at least the
4 normal and usual charge. A sworn declaration from a certified senior aircraft appraiser supports
5 this argument. The Cain Committee does not dispute the terms of the lease, acknowledges that it
6 paid the Pegasus invoices, and denies that it received any in-kind contributions.⁶

7 The available information appears to sufficiently refute Complainant's allegation.
8 Accordingly, the Commission finds no reason to believe that the Friends of Herman Cain or
9 Herman Cain violated 52 U.S.C. §§ 30116(f) or 30118(a) by accepting the alleged in-kind
10 contribution.

⁵ The two Pegasus invoices at issue in this matter reflect additional charges for flight attendants, catering, charges, flight phone charges and airport fees. The Cain Committee's 2011 Year-End Report discloses the payment of the two invoices with a \$596.98 discrepancy apparently reflecting the difference highlighted between the catering estimate and the total catering charges due (\$194,754.95 instead of \$195,351.93). See Cain Committee Amended 2011 Year-End Report (Apr. 12, 2012) at 5043, 5078, available at <http://docquery.fec.gov/pdf/470/12970917470/12970917470.pdf>. The Cain Committee paid Pegasus for further use of the airplane on two more occasions: \$181,103.31 on December 1, 2011; and \$79,580 on December 6, 2011. *Id.* at 5105, 5125. In sum, the Cain Committee paid Pegasus \$516,108.01. See Cain Committee Resp. at 4.

⁶ Cain Committee Resp. at 2-3 (Aug. 9, 2016).

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Transnational Management Systems LLC **MUR 7056**
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8 **I. INTRODUCTION**

9 Complainant alleges that Transnational Management Systems LLC ("TNMS") made an
10 in-kind contribution to Herman Cain and Friends of Herman Cain ("Cain Committee") by
11 leasing them a jet at a below-market price. TNMS did not respond to the Complaint. As
12 discussed in further detail below, based on the available information, the Commission finds no
13 reason to believe that Transnational Management Systems LLC violated the Federal Election
14 Campaign Act of 1971, as amended (the "Act") in connection with the alleged in-kind
15 contribution.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 The Complaint alleges that TNMS and Transnational Management Systems II, LLC
18 ("TNMS II"), two LLCs of Adam H. Victor, leased an airplane to the Cain Committee at a
19 reduced price.¹ According to the Complaint, Victor owns Gulfstream jets through the two LLCs,
20 and an outside firm, Pegasus Elite Aviation, Inc. ("Pegasus"), manages the jets.² The Complaint
21 alleges that, pursuant to an agreement between the LLCs and Pegasus, the usual charter rate for
22 use of the planes was \$5,000 per hour plus fuel and airport fees, but the Cain Committee was
23 charged only \$25,000 for five days, plus fuel and airport fees, allegedly a 75% discount from the
24 usual and normal charter cost.³ In other words, the Complainant alleges that the LLCs and

¹ MUR 7056 Compl. at 17 (¶ 80).

² *Id.* at 6-7 (¶¶ 31-34).

³ *Id.* at 8, 12 (¶¶ 40-42, 58-60).

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- 1 Victor made in-kind contributions to the Cain Committee worth \$75,000.⁴ The available
- 2 information, however, indicates that the Cain Committee leased the plane owned by TNMS II,
- 3 not TNMS. Because TNMS does not appear to have been involved in the airplane leasing at
- 4 issue, the Commission finds no reason to believe that TNMS violated the Act.

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⁴ *Id.* at 12-14 (¶¶ 61-63, 66-68).

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Pegasus Elite Aviation, Inc.

MUR 7056

I. INTRODUCTION

Complainant alleges that Pegasus Elite Aviation, Inc. ("Pegasus") made an in-kind contribution to Herman Cain and Friends of Herman Cain ("Cain Committee") by leasing them a jet at a below-market price. Pegasus denies this allegation. As discussed in further detail below, based on the available information, the Commission finds no reason to believe that Pegasus violated 52 U.S.C. § 30118(a) by making a prohibited contribution.

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended, prohibits corporations from making contributions to any federal candidate or candidate committee. 52 U.S.C. § 30118(a).

The Complaint alleges that Pegasus, Adam H. Victor and two of his LLCs, Transnational Management Systems LLC ("TNMS") and Transnational Management Systems II, LLC ("TNMS II"), leased an airplane to the Cain Committee at a reduced price.¹ According to the Complaint, Victor owns Gulfstream jets through the two LLCs, and Pegasus, an outside firm, manages the jets.² The Complaint alleges that, pursuant to an agreement between the LLCs and Pegasus, the usual charter rate for use of the planes was \$5,000 per hour plus fuel and airport fees, but the Cain Committee was charged only \$25,000 for five days, plus fuel and airport fees, allegedly a 75% discount from the usual and normal charter cost.³ In other words, the

¹ MUR 7056 Compl. at 17 (¶ 80).

² *Id.* at 6-7 (¶¶ 31-34).

³ *Id.* at 8, 12 (¶¶ 40-42, 58-60).

1 Complainant alleges that Pegasus and other entities made in-kind contributions to the Cain
2 Committee worth \$75,000.⁴

3 Pegasus responds that the Cain Committee paid more than fair market value, not less, to
4 lease the plane owned by TNMS II.⁵ According to Pegasus, a customer would ordinarily pay an
5 hourly rate, and the typical charter rate at that time would have been \$5,000 per flight hour plus a
6 \$750 fuel surcharge.⁶ Under this calculation, the charge to Cain would have been \$171,925.⁷
7 The Cain Committee, however, paid separately for landings and fuel; these items are usually
8 rolled into the hourly charge.⁸ Cain paid a daily rate of \$5,000 for ten days, or \$50,000, plus
9 \$112,350.15 in fuel costs, and \$60,000 in landing fees for a total amount of \$222,350.15.⁹ Thus,
10 according to Pegasus, Cain actually paid substantially more than the normal and usual charge.¹⁰
11 A sworn declaration from a certified senior aircraft appraiser supports this argument.

⁴ *Id.* at 12-14 (¶¶ 61-63, 66-68).

⁵ Pegasus Resp. at 1, 6-8 (May 31, 2016). Pegasus is currently involved in a lawsuit with Victor. *See TransNational Management Systems, LLC et al. v. Pegasus Elite Aviation, Inc.* Ca. Spr. Ct., L.A. County, N.W. Dist., Case No. LC100724. The lawsuit is unrelated to the airplane service provided to the Cain Committee.

⁶ Pegasus Resp. at 5.

⁷ *Id.* at 6.

⁸ *Id.* at 7. Pegasus provided the invoices that the Cain Committee in fact paid for the flight services at issue, which reflect the \$5,000 daily charge. *Id.* Ex. 5.

⁹ The two Pegasus invoices at issue in this matter reflect additional charges for flight attendants, catering, charges, flight phone charges and airport fees. *See* Pegasus Resp., Ex. 5. The Cain Committee's 2011 Year-End Report discloses the payment of the two invoices with a \$596.98 discrepancy apparently reflecting the difference highlighted between the catering estimate and the total catering charges due (\$194,754.95 instead of \$195,351.93). *See* Cain Committee Amended 2011 Year-End Report (Apr. 12, 2012) at 5043, 5078, available at <http://docquery.fec.gov/pdf/470/12970917470/12970917470.pdf>; Pegasus Resp., Ex. 5. The Cain Committee paid Pegasus for further use of the airplane on two more occasions: \$181,103.31 on December 1, 2011; and \$79,580 on December 6, 2011. *Id.* at 5105, 5125. In sum, the Cain Committee paid Pegasus \$516,108.01.

¹⁰ Pegasus Resp. at 7.

- 1 Pegasus's Response and the other available information appear to sufficiently refute
- 2 Complainant's allegation. Accordingly, the Commission finds no reason to believe that Pegasus
- 3 Elite Aviation, Inc. violated 52 U.S.C. § 30118(a) by making a prohibited in-kind contribution in
- 4 connection with the aircraft lease to the Cain Committee.

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BEFORE THE FEDERAL ELECTION COMMISSION

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In the matters of)

Adam H. Victor)

TransGas Development Systems, LLC)

MURs 7005 and 7006 OF GENERAL
COUNSEL

CONCILIATION AGREEMENT

These matters were initiated by signed, sworn, and notarized complaints by Tyler Erdman. The Commission found reason to believe that Adam H. Victor and TransGas Development Systems, LLC ("Respondents") violated 52 U.S.C. §§ 30116(a) and 30122 by making excessive contributions and contributions in the name of another.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Adam H. Victor is the sole member of TransGas Development Systems, LLC ("TGDS"), a single-member LLC that is not treated as a corporation by the Internal Revenue Service.

2. On March 29, 2011, Victor contributed the maximum allowable amount to Manchin for West Virginia ("Manchin Committee") for both the 2012 Primary and General Elections, that is, \$2,500 per election. The Manchin Committee is the principal campaign committee of Joe Manchin.

3. Victor instructed Randall Harris, a business associate, to contribute \$2,500 to the Manchin Committee, with the express understanding that Victor would reimburse him for making that contribution. Harris wrote a \$2,500 personal check payable to the Manchin Committee, which disclosed receiving the contribution on December 30, 2011. At Victor's direction, Harris's contribution to the Manchin Committee was reimbursed by a \$2,500 check payable to Harris, drawn on the bank account of TGDS and dated December 29, 2011.

4. Around the time of the November 11, 2011, fundraising event in New York City supporting then-Presidential candidate Herman Cain, Victor contributed the maximum allowable amount of \$2,500 to Friends of Herman Cain, Inc. ("Cain Committee") for the 2012 Republican Primary Election. The Cain Committee is the principal campaign committee of Herman Cain. The Cain Committee disclosed its receipt of this contribution on January 17, 2012.

5. Around the time of the November 11, 2011, Herman Cain fundraiser, Victor instructed his employee Marta Dani to contribute \$2,500 to the Cain Committee with the express understanding that Victor would reimburse her for making the contribution. Dani wrote a \$2,500 personal check payable to the Cain Committee, which disclosed receiving the contribution on November 9, 2011. At Victor's direction, Dani's contribution to the Cain Committee was reimbursed by a \$5,000 check payable to Dani, drawn on the bank account of TGDS and dated on or about November 9, 2011.

6. Around the time of the November 11, 2011, Herman Cain fundraiser, Victor instructed his employee Nana Yoshioka to contribute \$2,500 to the Cain Committee with the express understanding that Victor would reimburse her for making the contribution. Yoshioka wrote a \$2,500 personal check payable to the Cain Committee, which disclosed receiving the contribution on January 17, 2012. At Victor's direction, Yoshioka's contribution to the Cain Committee was reimbursed by a \$2,500 check payable to Yoshioka, drawn on the bank account of TGDS and dated November 9, 2011.

7. Around the time of the November 11, 2011, Herman Cain fundraiser, Victor used funds in the Adam Victor Grantor Trust, of which Victor is the sole beneficiary and trustee, to purchase five bank checks from Signature Bank numbered 111004934 through 111004938, each in the amount of \$2,500. After Victor presented the five checks to the Cain Committee, a representative of that committee subsequently sought clarification as to the identity of the five contributors. Victor had a representative inform the Cain Committee that the contributors were his wife and his four children, and each contribution was in the amount of \$2,500. Victor's wife and four children did not provide the funds to make these contributions. The Cain Committee disclosed the receipt of these contributions in the names of Victor's wife and four children on January 17, 2012.

V. The pertinent law in this matter is as follows:

1. Under the Federal Election Campaign Act of 1971, as amended ("the Act"), an individual may not make a contribution to a candidate with respect to any election in excess of the limits at 52 U.S.C. § 30116(a)(1)(A), which were \$2,500 per election during the 2012 election cycle. The contribution limits are applied separately with respect to each election. See 52 U.S.C. § 30116(a)(6).

2. A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 C.F.R. § 301.7701-3 shall be attributed only to that single member. See 11 C.F.R. § 110.1(g)(4).

3. The Act further provides that no person shall make a contribution in the name of another person. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i).

4. A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."

VI. Respondents admit to the following violations of the Act:

1. Adam H. Victor knowingly and willfully violated 52 U.S.C. § 30116(a) by making excessive contributions.

2. Respondents knowingly and willfully violated 52 U.S.C. § 30122 by making contributions in the name of another person.

VII. Respondents will take the following actions:

1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Sixty-Five Thousand Dollars (\$65,000), pursuant to 52 U.S.C.

§ 30109(a)(5)(B). The civil penalty will be paid as follows:

- a. A payment of Thirty Five Thousand Dollars (\$35,000) is due no more than thirty (30) days from the date this Agreement becomes effective;
- b. Thereafter, four consecutive monthly installment payments of Seven Thousand Five Hundred Dollars (\$7,500) each;

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- c. Each such installment shall be paid within thirty (30) days of the due date of the previous installment;
 - d. In the event that any installment payment is not received by the Commission by the fifth day after which it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the Respondents. Failure by the Commission to accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

2. Respondents will cease and desist from violating 52 U.S.C. §§ 30116(a) and 30122.

3. Respondents waive any rights he may have to a refund of any of the illegal contributions discussed in this agreement. Respondents shall also seek disgorgement of all such contributions from all recipient candidates and committees to the U.S. Treasury.

VIII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

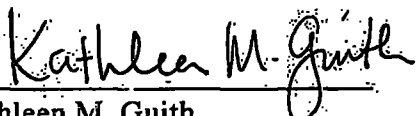
IX. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

X. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI. This conciliation agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

FOR THE COMMISSION:

EY:


Kathleen M. Guith
Associate General Counsel
for Enforcement

8/11/17
Date

FOR THE RESPONDENTS:


Adam H. Victor

7/19/17
Date